

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

1:00-CR-384  
(LEK)

v.

CHARLES EDWARD CAINE,  
COLLEEN L. CAINE

Defendants.  
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**DECISION and ORDER**

On September 29, 2004, Charles Edward Caine ("Petitioner") filed a motion seeking leave of the Court to amend pursuant to FED. R. CIV. P. 15(c)(2). Motion (Dkt. No. 48). In his motion, Petitioner states that in light of recent Supreme Court rulings in Crawford v. Washington, 541 U.S. 36 (2004) and Blakely v. Washington, 542 U.S. \_\_\_\_ (2004), this Court's utilization of the Federal Sentencing Guidelines in the calculation of his sentence violated his constitutional Due Process rights. Id. Petitioner renewed his motion in a letter dated January 14, 2005 after the decision in Booker v. United States, \_\_\_\_ U.S. \_\_\_\_ (2005).

By Orders dated February 7, 2005 and March 8, 2005, this Court ordered Petitioner to advise the Court in writing within thirty (30) days whether he consented to his motion being recharacterized as a Section § 2255 motion, or whether he wished to withdraw the motion rather than have it so recharacterized. See Feb. 7 Order (Dkt. No. 52); March 8 Order (Dkt. No. 55).

Petitioner has failed to advise the Court of his wishes. Therefore, Petitioner's

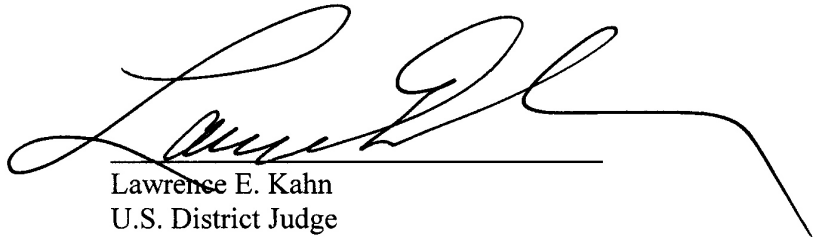
motion is dismissed.

WHEREFORE, it is hereby

ORDERED, Petitioner's letter motion dated January 14, 2005 is **DISMISSED**.

ORDERED, that the Clerk serve a copy of this Order on the petitioner by regular mail.

IT IS SO ORDERED.



Lawrence E. Kahn  
U.S. District Judge

DATED: April 12, 2005  
Albany, New York